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From:

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To:

Cc:

Subject: RE: TEFRA Question

Section 6231(g) provides that the TEFRA partnership procedures will apply, or not apply, based upon the Service's reasonable determination on the basis of the partnership return for the taxable year. However, section 6231(g) should be relied upon only when the limitations period prevents changing the audit procedures; if the limitations period allows, then the examiner should switch audit procedures based upon the new determination. IRM 4.31.2.1.7, *Making a Reasonable Determination of Whether the Partnership is Subject to the TEFRA Procedures*.

To the extent that the revenue agent has determined that at all relevant times none of the partners, as defined by section 6231(a)(2), are pass-thru partners, as defined by section 6231(a)(9), and that the small partnership exception of section 6231(a)(1)(B) is otherwise applicable, then the revenue agent should not apply TEFRA partnership procedures.

To the extent that the Service relies on section 6231(g), I am not aware of any authority that would conclusively determine which reading of the return is more reasonable.

If the trusts could not appropriately employ the TINs of the owners, that may tip the scale towards a reading that the partners were the individual owners. Treas. Reg. 301.6109-1(a)(2)(i)(B) provides that a trust that is owned by one person and that reports pursuant to Treas. Reg. 1.671-4(b)(2)(i)(A) "need not obtain a taxpayer identification number." The issue of whether the trusts could appropriately employ the TINs of the trust owners belongs to . If necessary, I am happy to forward this e-mail message to the appropriate individuals.

If the Service determines that the TEFRA partnership procedures are applicable, and there is a question regarding the identity of the direct partners of the TEFRA partnership, please see Chief Counsel Notice 2009-027, question C3 at pages 6-7.